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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT APPLICATION EXAMINING OPERATIONS

Appl. No. : 10/645,226
Applicant : Steve Lin
Filed : August 21, 2003
TC/A.U. : 3727
Examiner : Smalley, James N.

Confirmation No. 7137

Docket No. : DES: 1250.0030
Customer No. : 00152

APPELLANT'S REPLY BRIEF

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Dear Sir:

Appellant respectfully submits the following points in response to the Examiner's

Answer.

Obviousness of Claims 1-6

Equivalence of Snap-on with Screw Threads/Ratchet Rings Combination

Applicant's claim 1 recites the limitation in subparagraph (b) that the inner portion of the cap's skirt has a screw thread capable of matingly engaging the screw thread of the container's open end and a ratchet-toothed ring capable of lockingly engaging the ratchet-toothed

ring of the open end of the container; in other words, a combination of (i) a pair of cooperating screw threads and (ii) a pair of cooperating ratchet-toothed rings. The Examiner concedes that the primary reference Davis '904 does not disclose such an arrangement, disclosing instead a snap-on connection. To supply this deficiency in '904, the Examiner appears to argue that Ostrowsky '324 teaches that applicant's claimed combination of (i) a pair of cooperating screw threads and (ii) a pair of cooperating ratchet-toothed rings is mechanically equivalent to the snap-on connection of '904 and therefore "one of ordinary skill would find it obvious, if he so desired, to modify the cap of Davis '904, replacing the snap bead connection with a threaded cap having interlocking ratchet teeth" because '324 teaches the '324 snap-on connection may be used instead of the '324 screw-on disclosure. Examiner's Answer, paragraph bridging pages 3 and 4.

But the fallacy in this argument is that it assumes two facts that are not established on this record: (1) the '324 snap-on connection is the same as that disclosed in '904; and (2) the '324 screw-on connection is the same as that claimed by applicants in claim 1. In connection with assumption (1), note that the '324 snap-on connection shown in FIG. 7 has one cooperating flange 195 and shoulder 196 with a stud 144 having a retaining barb 145, while the '904 snap-on connection shown in FIG. 3 has three sets of cooperating flanges and shoulders and no stud or retaining barb. In connection with assumption (2), the '324 screw-on connection has only one ratchet toothed ring, while applicant's has two.

The rationale offered by the Examiner in support of his assertion that the '324 patent teaches mechanical equivalence between a snap-on connection as shown in '904 with the combination of a pair of cooperating screw threads and two ratchet-toothed rings is confusing

and does not address several key points raised by appellant. Specifically, the Examiner's argument on this issue begins with the following incomplete sentence:

Regarding Appellant's point (2) regarding the rejection of claims 1-6, Examiner notes the similarities between the connection means of Davis '904, comprising a lip (37) on the inner surface of the anchor band (24) which engages with a container auxiliary feed (3).
Examiner's Answer, page 3, third paragraph, first sentence.

Note that the Examiner does not state what he is comparing the connection means of Davis '904 with. In any event, assuming the Examiner intended to compare the '904 snap-on structure shown in FIG. 3 of '904 with the snap-on structure of '324 shown in FIG. 7, the Examiner does not address the point made above that the structure shown in '904 FIG. 3 has three sets of cooperating flanges and shoulders with no stud and barb, while the structure shown in FIG. 7 of '324 shows but one cooperating flange and shoulder with a stud and barb.

Nor does the Examiner's Answer address appellant's point raised in his brief that '324 discloses only one ratchet-toothed ring in the cap portion that cooperates with lugs, and not a second ratchet-toothed ring on the neck of the container.

Moreover, the Examiner simply has not responded to appellant's point raised in his brief that the structure shown in FIG. 7 of '324 includes a stud 144 having a retaining barb 145 which "assist[s] in sealing the discharge orifice 126." See '324 at column 5, line 59. Thus, '324 teaches a two-component snap-on connection that finds no correspondence whatsoever to the triple flange and shoulder combination connection shown in FIG. 3 of '904.

Nor does the Examiner's Answer respond to appellant's previously raised point that Ostrowsky '324 distinguishes his snap-on closure from his screw-on closure by stating that

his snap-on closure facilitates better control over the radial orientation of the closure and orifice than does his screw-on closure. See '324 at column 6, lines 34-37. How can the two structures be equivalent if one affords an advantage over the other?

Inner Circumferential Recess in Flip Top Forming Seal

Turning to the limitation in the last two lines of applicant's claim 1 of an inner circumferential recess in the flip-top capable of non-threadedly engaging the circumferential flange of the lip of the container to form a fluid-tight seal between the flange and the recess, the Examiner's Answer fails to point out where in '904 there is found an inner circumferential recess in a flip top that engages a circumferential flange integral with the lip of the container so as to form a fluid-tight seal between the flange and the recess. Instead, the Examiner points to '904 FIG. 3 element 36, which is not a recess in the flip top, but rather a protrusion in the flip top.

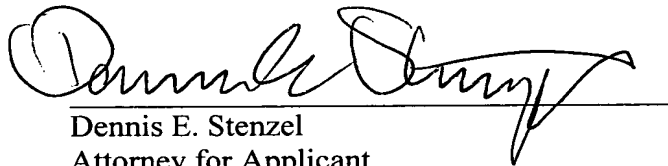
Obviousness of Claim 8

Finally, in connection with the supposed obviousness of claim 8, the Examiner states: "...Examiner notes that because the applied prior art does obviate all claimed limitations, claim 8 is properly rejected." Since the meaning of "obviate" is "to prevent or counteract by anticipating," this argument is not understood, and is clearly out of step with the law of obviousness. Beyond this puzzling argument, the Examiner appears to have focused on only a portion of the additional claim limitation found in claim 8, namely, "radial tongue." The entirety of the additional claim 8 limitation is that the "inner circumferential recess of the flip-top has a

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radial tongue portion proximal to said hinge capable of guiding said inner circumferential recess into alignment with said circumferential flange of said container." In other words, the radial tongue portion in claim 8 is part of the inner circumferential recess of the flip top. As noted above, '904 does not disclose any recess in the flip top, and element 36 in FIG. 3 of '904, relied upon by the Examiner, is a protrusion rather than a recess. Accordingly, the Board may, should it desire, simply ignore the Examiner's extensive arguments to the effect that the deep end of the '904 annular bung satisfies the claim language "radial tongue."

Respectfully submitted,



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Dated: Dec 12 '05



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